

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 27, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Lessee's Request for Early Termination of General Lease No. S-3836, NoJer Enterprises, Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-048:001.

APPLICANT:

NoJer Enterprises, Inc., a Texas Corporation, doing business as Orchids of Hawaii.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-048:001, as shown on the attached map labeled Exhibit A.

AREA:

7.855 acres, more or less.

ZONING:

State Land Use District: Conservation
County of Hawaii CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by General Lease No. S-3836, NoJer Enterprises, Inc. for wholesaling, retailing and packing of nursery products and other related items. Lease to expire on June 15, 2019.

TERM OF LEASE:

Original term of 55 years, commencing on June 16, 1964 and expiring on June 15, 2019. A recent rental reopening for the remaining five years has established the lease rent at \$23,660.00 per annum, effective June 16, 2014.

CURRENT ANNUAL RENT:

\$3,142.00 per annum

REMARKS:

General Lease No. S-3836 was sold at public auction on June 126, 1964 to Tsuruyo Oda, Partnership for a period of 55 years. Rental reopenings were on the 20th, 30th, 40th and 50th years of the lease term.

At its meeting of January 24, 1969, under agenda item F-1, the Board consented to the assignment of lease from Tsuruyo Oda Partnership to Oda Orchids, Inc. Then, at its meeting of November 7, 1986, under agenda item F-4, the Board consented to a request for a waiver of the performance bond requirement.

The Board further consented to an assignment of lease at its meeting of September 24, 1993, under agenda item F-1-d, from Oda Orchids, Inc. to Kenpai Tanaka Hawaii, Inc. Then, at its meeting of September 22, 2000, under agenda item D-13, the Board consented to the assignment of lease from Kenpai Tanaka Hawaii, Inc. to NoJer Enterprises, Inc.

More than three-quarters of the property has been cleared, graded and is actively utilized for agricultural purposes. The Lessee utilizes the property as an ornamental plant nursery and cultivates orchids, anthuriums and assorted tropical flowers and foliage for commercial sale. According to the Lessee, approximately three-fourths of an acre of land is devoted to orchid cultivation within various greenhouse structures. In addition to the greenhouse structures, a little over an acre of artificial shade area is dedicated to anthuriums cultivation. The remaining growing areas are devoted to assorted tropical flowers and foliage. A large packing facility/storage warehouse is also located on the property.

After fifty years of growing and selling orchids and other tropical flowers and with five years remaining on the lease, the Lessee was preparing to close down its business operation on the State leasehold property. They have recently sold the packing and export division of the business and were planning to phase out the growing portion within the remaining five years. The scheduled rental reopening for the remaining five years of the lease determined the new

rent at \$23,660.00 per annum. This represents more than a 700% increase from the current rent and the Lessee has concluded that it would not be feasible to continue the operation at the proposed rent. In a letter dated April 14, 2014 (Exhibit B), the Lessee informed Land Division that they are rejecting the proposed rental increase and is making a request for early termination of GL S-3836.

Staff has reviewed the lease account. The Lessee is current with the liability and fire insurance requirements. The performance bond requirement was waived by the Board on November 7, 1986. The Lessee is current with rent through June 16, 2014.

As a result of an inspection performed on May 13, 2014 and because of the Lessee's request for an early termination of the lease, staff is recommending the Board require the Lessee conduct a Phase 1 Environmental Site Assessment¹ (ESA) on the property and perform any remediation resulting from the Phase 1 ESA. All costs associated to Phase 1 ESA shall be paid by the Lessee and completed by December 31, 2014.

In order to defray some of the expenses associated with the Phase 1 ESA, the Lessee is requesting authorization from the Board for the removal and subsequent sale of the greenhouse structures on the leasehold property.

Staff is recommending the Board authorize the cancellation of General Lease No. S-3836, NoJer Enterprises, Inc., Lessee, subject to the following:

RECOMMENDATION: That the Board:

1. Authorize the mutual cancellation of General Lease No. S-3836, NoJer Enterprises, Inc., Lessee, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation lease document form, as may be amended from time to time;
 - B. The effective date of cancellation shall be June 15, 2014;
 - C. Require the Lessee conduct a Phase 1 Environmental Site Assessment (ESA) and perform any remediation resulting from the Phase 1 ESA. All costs shall be paid by the Lessee and completed by December 31, 2014;
 - D. Allow the Lessee to remove greenhouse structures in order to offset the costs associated with the Phase 1 ESA and any subsequent remediation;

¹ Although this lease does not have a provision for a Phase 1 Environmental Site Assessment, it is currently required upon termination of all new DLNR agricultural leases.

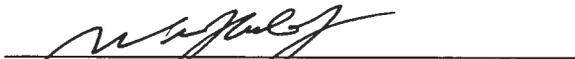
- E. Review and approval by the Department of the Attorney General; and
- F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



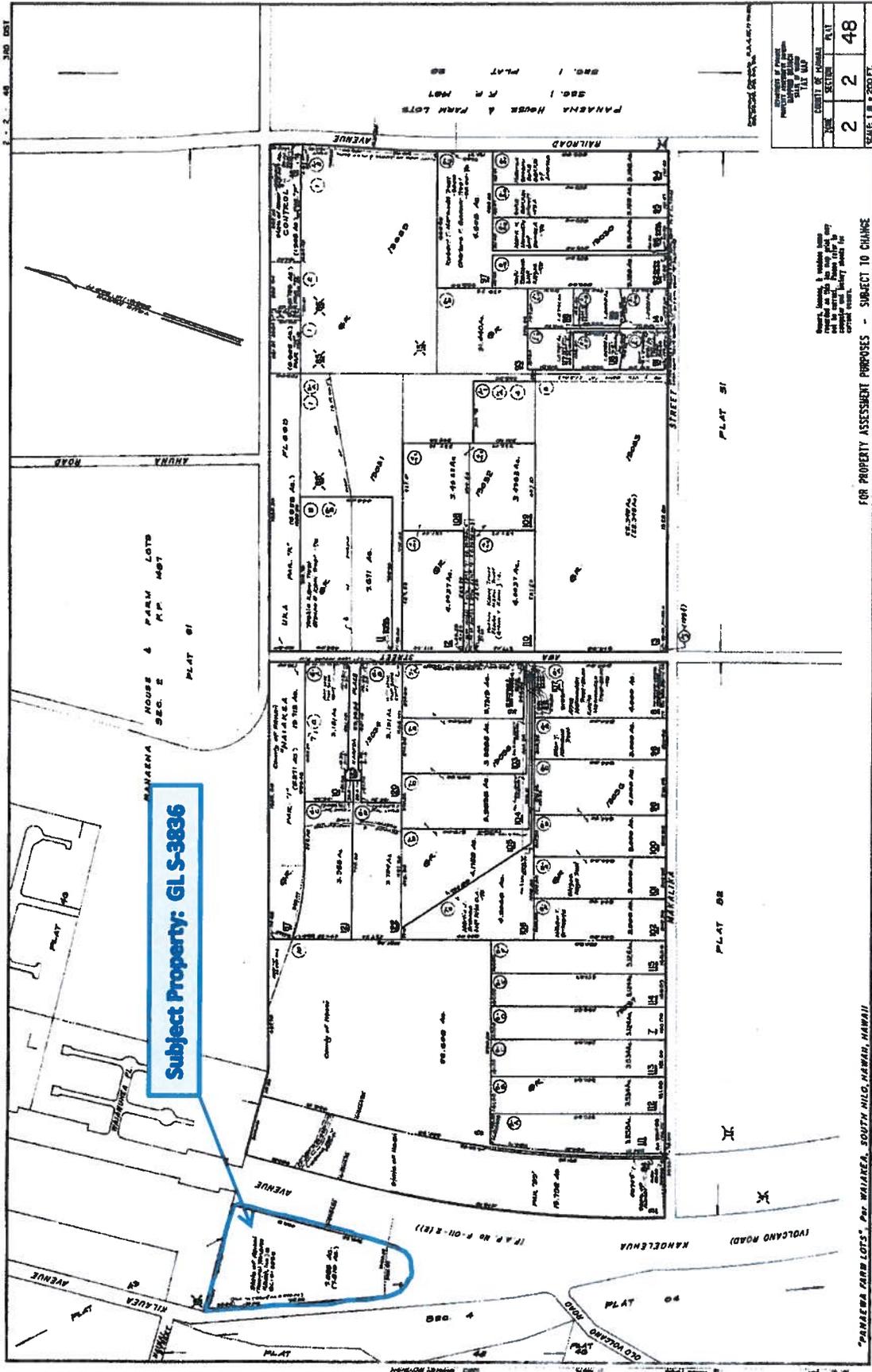
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

v



Subject Property: GL S-3836

Notes: Owners & lessees are liable for the full value of any improvements on the property in accordance with the applicable local laws.

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

"PANAMA HOUSE LOTS", P.P. WAIALEALE, SOUTH HILO, HAWAII, HAWAII

DATE	2	2	48
SECTION	2	2	48
PLAT	48		

SCALE: 1" = 200 FT.

EXHIBIT A

GL S-3836



RECEIVED
LAND DIVISION

2014 APR 21 AM 10:28

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Nojer Enterprises

PO Box 782267
San Antonio, Tx 78278
Nojer1@juno.com

April 14, 2014

Russell Y. Tsuji
State of Hawaii
Department of Land and Natural Resources
PO Box 621
Honolulu, HI 96809

Gentlemen:

Subject: ~~REOPENING OFFER LETTER~~

Ground Rent for General Lease No. S-3836, Waiakea, South Hilo
Island of Hawaii: TMK (3)2-2-048:001

We are in receipt of the letter dated April 3, 2014 which states the new rent rate of \$23,660.00 per annum. As you are undoubtedly aware, this is a significant increase.

This letter is to notify you that we are rejecting this proposal. We: 1) cannot afford an independent appraiser and 2) cannot afford any increase in rent rate. If we are not able to continue at the current lease rate, we will surrender the lease and terminate.

Sincerely yours,



Jeri Oishi, President



Noboru Oishi, Vice President

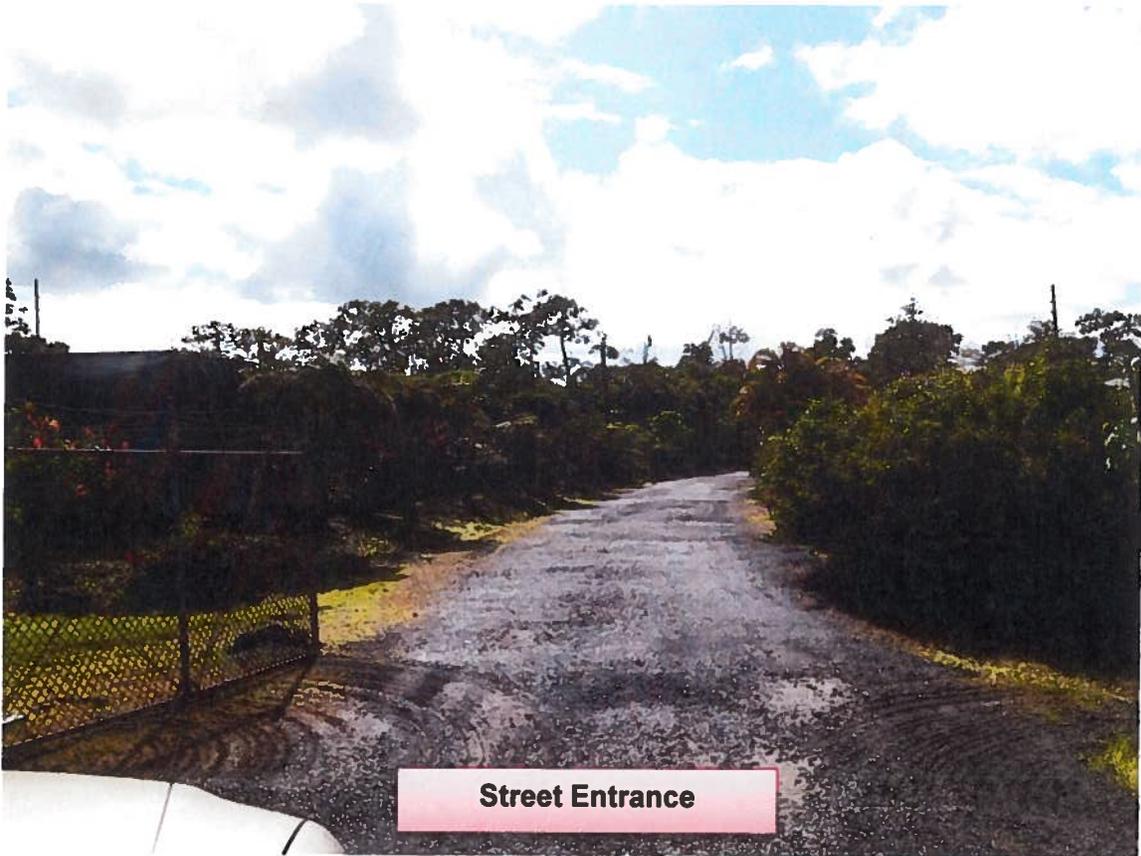
Nojer Enterprises

dba Orchids of Hawaii

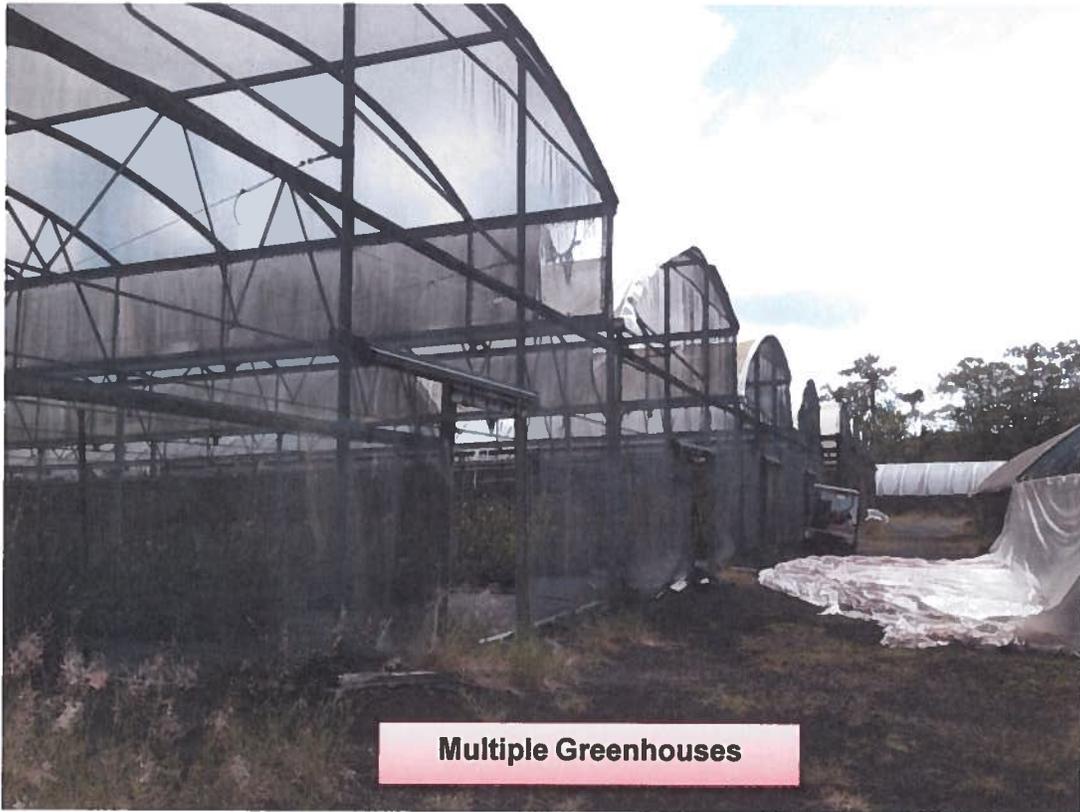
EXHIBIT B



Street Entrance



Street Entrance



Multiple Greenhouses



Partially Covered Greenhouse



Greenhouse Interior



Uncovered Greenhouse